



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NANCY APONTE, et al.,

Plaintiffs,

-against-

CLINTON STREET PIZZA INC. d/b/a
RIZZO'S FINE PIZZA, et al.,

Defendants.

20-CV-2037 (BCM)

**ORDER SEVERING CLAIMS
AGAINST NONCONSENTING
DEFENDANTS**

BARBARA MOSES, United States Magistrate Judge.

WHEREAS, plaintiffs Nancy Aponte and Gabriel Alves Marquez filed this action on March 6, 2020, against defendants Clinton Street Pizza Inc. (CSP), Amedeo Orlando, Alexander Lyudmir, and Francesco Taormina, asserting claims under the Fair Labor Standards Act (FLSA) and other statutes; and

WHEREAS, on March 4, 2022, plaintiffs and defendant Taormina (who by then had agreed to settle the claims against him) consented to the jurisdiction of the assigned magistrate judge for all, purposes pursuant to 28 U.S.C. § 636(c), by executing a Form AO 85 (Dkt. No. 64); and

WHEREAS, on March 9, 2022, the Hon. Kimba M. Woods, United States District Judge, so-ordered the Form AO 85, thereby referring the case to me to conduct all proceedings, including the settling parties' pending joint motion (Dkt. No. 61) for approval of their FLSA settlement, and order the entry of a final judgment; and

WHEREAS, the Clerk of Court thereafter assigned the entire case to my docket; and

WHEREAS, defendants CSP, Orlando, and Lyudmir (the Nonconsenting Defendants) did not consent to the jurisdiction of the assigned magistrate judge pursuant to 28 U.S.C. § 636(c); and

WHEREAS, defendants CSP and Orlando cannot so consent at present, because they are in default (Dkt. Nos. 22, 59); and

WHEREAS, the undersigned magistrate cannot exercise plenary jurisdiction over non-consenting parties, *see* 28 U.S.C. § 636(c)(1) ("[u]pon the consent of the parties," the magistrate judge "may conduct any or all . . . and order the entry of judgment in the case"); *New York Chinese TV Programs, Inc. v. U.E. Enterprises*, 996 F.2d 21, 23 (2d Cir. 1993) (consent under § 636(c) must be "both unanimous and unambiguous"); *Rodrigues v. Corona Advances, Inc.*, 2018 WL 4043149, at *3 (S.D.N.Y. Aug. 24, 2018) (magistrate judge lacked jurisdiction to issue judgment against defaulted defendant who never consented pursuant to § 636(c));

NOW THEREFORE, it is hereby ORDERED that:

1. Plaintiffs' claims against the Nonconsenting Defendants (Clinton Street Pizza Inc., Amedeo Orlando, and Alexander Lyudmir) shall be and they hereby are SEVERED from the claims of consenting defendant Francesco Taormina pursuant to Fed. R. Civ. P. 21.
2. The Clerk of Court is respectfully directed to reassign plaintiffs' claims against the Nonconsenting Defendants to the Hon. Kimba M. Wood, United States District Judge, under a new docket number.
3. Plaintiffs' claims against defendant Taormina will remain before me under the present docket number.

Dated: New York, New York
April 15, 2022

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge